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Before the
Federal Communications Commission

Washington, D.C. 20554

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In the Matter of)
The Telephone Consumer)
Protection Act of 1991)

CC Docket No. 92-90

Federal Communications Commission
Office of the Secretary

To: The Commission

COMMENTS OF COX ENTERPRISES, INC.

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits its comments in the Notice of Proposed Rule-making in CC Docket No. 92-90 ("Notice"), adopted April 10, 1992 concerning the Telephone Consumer Protection Act of 1991 ("TCPA").

INTRODUCTION

As a diversified company with interests in the creation and distribution of information to consumers, Cox is uniquely positioned to provide its comments in this Rulemaking. Cox provides millions of U.S. consumers information via its newspapers, television stations, and cable television systems. Cox is committed to providing more and better information services to U.S. consumers, and to this end has developed a variety of methods with which to contact existing and potential customers, including some which rely on the telemarketing devices considered in the Notice.

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Cox supports the principles underlying the TCPA and the Commission's rulemaking. Consumers should be protected from unrestricted telemarketing, which can, if used without restraint, result in an unwarranted invasion of privacy. Cox further agrees that rights of privacy, public safety interests, and commercial speech should be balanced in such a manner to permit legitimate telemarketing practices which benefit consumers. The rapid growth of the telemarketing industry and the sales generated thereby demonstrate the success of such practices in matching consumer interest with marketed goods and services. However, Cox supports reasonable restrictions on telemarketing in order to curb abusive practices by some telemarketers which have not been contained by voluntary measures.

Cox Supports the Commission's Proposed Exemptions

Congress authorized the Commission under the TCPA to formulate rules for commercial automated or prerecorded calls which the Commission finds do not create a nuisance or an invasion of privacy. In Section 227(b)(2)(B), Congress authorized the Commission to exempt from the prohibited use of auto dialers:

(i) calls that are not made for a commercial purpose; and

(ii) such classes or categories of calls made for commercial purposes as the Commission determines

(I) will not adversely affect the privacy rights that this section is intended to protect; and

(II) do not include the transmission of any unsolicited advertisement.

Pursuant to this grant of authority, the Commission has proposed various exceptions to the prohibition on the use of auto dialing and prerecorded messages. Under the TCPA, calls which do not seek to sell a product or service are exempt, even if the message is commercial in nature, if they do not unnecessarily intrude upon the privacy interests protected by the statute. The Commission, in reliance on the statute, proposes to allow calls directed to parties with whom the caller has a present or prior voluntary business relationship because the called party has, in effect, authorized the contact. Such calls should include, the Commission suggests, debt collection calls which by nature involve an existing business relationship and do not offer a product or service.

Telemarketing provides an effective and cost-efficient means for businesses to contact customers, thus benefitting each of the parties involved. Cox uses auto dialing and prerecorded messages as a valuable ancillary tool to its telemarketing program and relies on automatic dialing and recorded messages for a variety of telemarketing purposes. Cox's cable division, for example, uses automated

messaging to confirm appointments with subscribers and to notify present or prior subscribers of upcoming events such as Pay Per View programs which past experience suggests would be of interest to them. Cox's cable division also uses automated messaging for billing and debt collection purposes. While Cox's newspaper division does not presently rely on auto dialing or prerecorded messages, it plans to use them to retain existing customers, to verify sales and deliveries, to provide subscribers with balance due information, to contact employees, to conduct research and opinion surveys, and to provide public service announcements.

Where auto dialing has been implemented, Cox finds that complaints regarding excess calls are virtually eliminated. The auto dialer allows Cox to quickly determine how many times a number has been called, who called, and the results of each call. This system allows Cox to design specific calling campaigns which reduce the total number of calls necessary to reach a desired result. Thus, auto dialing allows Cox to reach its customer base in an efficient and economical manner with a minimum of inconvenience to the parties called.

These telemarketing activities, although commercial in nature, do not implicate the consumer privacy interests protected by the TCPA. They are consistent with

the statutory exception for commercial calls which do not include the transmission of any unsolicited advertisement. In addition, these activities involve commercial contacts with parties with whom Cox has an established business relationship, which Congress has specifically exempted from prohibited telephone solicitation under the TCPA. Cox therefore supports the exemptions proposed by the Commission as authorized under the TCPA.

Cox Requests the Commission to Exempt
"Please Hold" Calls

In addition to the uses of auto dialing and prerecorded messages listed above, Cox uses an automated system for telephone solicitation that temporarily puts the called party on hold if a live operator is not immediately available to come on the line. Cox urges the Commission to affirmatively exempt this type of automatic call as a variation of the exemption for commercial calls which do not contain an unsolicited advertisement. As used by Cox, its system automatically dials a prospective customer. When a party answers, a live operator, in the normal course of events, will come on the line. If, however, a live operator is temporarily unavailable, the system delivers a pre-recorded message asking the customer to "please hold, an operator will be with you shortly."

Such a use of auto dialing for this limited purpose should be affirmatively exempted as a commercial contact which does not involve the sale of a product or service. Since a live operator will eventually come on the line, this use does not entail the nuisance inherent in a totally automated call. Instead, the use of an automatic dialer and voice message serves to notify the called party that a live operator will soon be on the line. Cox finds that this type of telemarketing system greatly facilitates cost-efficient contact with potential customers, and at the same time, effects a minimal invasion of privacy. The called party, of course, can hang up at any time. Cox therefore requests the Commission to clarify its proposed exemption to provide that commercial calls which use an auto dialer in connection with a prerecorded "please hold" message to contact a customer, but use a live operator to provide a telemarketing message, are exempted from the automatic dialer ban.

The Commission Should Rely on "Do Not Call"
Lists to Protect Consumer Privacy

Through the enactment of the TCPA, Congress seeks to protect consumers from certain exempt telemarketing calls. To accomplish this end, the Commission has set out specific regulatory options intended to protect residential telephone subscribers' privacy rights to avoid receiving

telephone solicitations to which they object. Of the various alternatives suggested, Cox finds that its experience with company specific "do not call" lists indicates that this option will best achieve the TCPA's goals. Such lists have been maintained on a voluntary basis by telemarketers as a tool to avoid unproductive calls, as well as to maintain individual privacy. While thus far the voluntary use of such lists has had limited success in freeing consumers from objectionable telemarketing calls, a federal mandate to maintain such lists would create a comprehensive system offering a proven effective and cost-efficient method of protecting the privacy of consumers. This system has the added benefit of allowing calls to consumers who want to receive calls from some but not all telemarketers.

Cox's newspaper division has set up a dual no-call list which operates to protect those consumers who prefer not to receive telephone solicitation. The first list contains the names of people who request that the newspaper refrain from soliciting them. These lists are updated on a daily basis. The second list catalogues existing subscribers. Subscriber numbers are called only on matters related to payment and delivery and are updated on a daily basis as well.

Alternative methods of tracking consumer consent to telemarketing suggested by the Commission appear ineffective, involve unnecessary expense, or require advanced technology not yet available. The Commission itself discounts the need for time of day restrictions, as the nature of most telemarketing business dictates that the calls take place during regular business hours or in the early evening. A directory marking scheme remains as yet untried and may be ineffective as applied to national telemarketers. Network technologies, including the creation of a telephone prefix for telemarketers which would allow subscribers to screen out unwanted calls, would most likely require technological advances not presently available.

The TCPA allows the Commission to establish a single national database of residential subscribers who object to receiving telephone solicitations and to make that list available for purchase. Such a database, however, would be a problem to construct and to operate. The one such database presently operating in Florida charges consumers for participation; however, the TCPA expressly prohibits such a charge. This existing database operates in a single state and the costs of maintaining a national database are uncharted. Additionally, a national database would be incapable of distinguishing between a variety of telemarketing entities. A national list would unilaterally

deprive a listed consumer of any type of telemarketing contact. As discussed above, consumers respond positively to certain telemarketers but not others, as evidenced by the increase in both the use of telephones to directly provide goods and services and the number of complaints provoked by some telemarketing practices.

Cox, as a provider of newspaper and cable television services, depends heavily on telemarketing to acquire new subscribers in its local areas of operation. As a newspaper publisher Cox provides a unique community service for local and regional readers, which many consider a necessary ingredient to the functioning of a democratic society. Many consumers are willing to accept telemarketing contact from newspaper publishers which they would otherwise find objectionable from other telemarketers. By denying potential customers the opportunity to either accept or refuse telephone solicitation through implementation of a national database, the Commission would place an oppressive burden on these industries. Company-based lists, on the other hand, protect consumer privacy and at the same time allow telemarketers to reach potential customers in a cost-efficient and effective manner. This benefits both the customer and the telemarketing industry.

Based on the foregoing, Cox supports the Commission's proposed exemptions as discussed in its Notice.

Cox also urges the Commission to clarify its proposed regulations to permit the use of auto dialing and prerecorded messages for commercial solicitation when used with "please hold messages." Cox additionally urges the Commission to select company specific "do not call" lists as the appropriate regulatory option to restrict live operator telephone solicitation to subscribers.

Respectfully submitted,

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